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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,170	10/12/2001	Richard H. Balmer	A148 1550	2857

112 7590 04/26/2005

ARMSTRONG WORLD INDUSTRIES, INC.
LEGAL DEPARTMENT
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LANCASTER, PA 17604-3001

EXAMINER

FISCHER, JUSTIN R

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/977,170

Applicant(s)

BALMER ET AL.

Examiner

Justin R. Fischer

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1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 11 April 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☒ Newly proposed or amended claim(s) 4,5 and 27 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,2,6-8,17-22,24-26,29,40,42,44,46 and 48-55.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

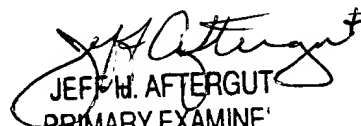
Continuation of 11: In regards to the term “agglomeration”, the term more broadly refers to the collection of particles to form a larger mass- such a term does not exclude the “singled fused mass” noted by applicant. Furthermore, the relevant particles are processed through pressure/lamination rolls and it is unclear how such a process results in a “single fused mass” (no description of heating and fusing). It is noted that the agglomerated particles of the claimed invention are formed by compacting or pressing. With respect to the orientation of the surfaces, each of said surfaces of Lemoine would be irregular since the band is fed to the shredding device via a gravity deposition process- the surface of the band that initially contacts the belt or conveyor 15 would be irregular since the shredding does not occur with said surface contacting the belt or conveyor. In light of applicant’s statement, given the irregular surfaces, a “labyrinthine” arrangement would be expected in the laminate of Lemoine. Regarding “grinding”, the goal of Lemoine is to reduce the size of the particles- the manner in which this achieved would have been obvious to one of ordinary skill in the art at the time of the invention. It is seen that grinding and shredding are closely related, especially in view of applicant’s definition of “to reduce to... small fragments by friction”. Lastly, with respect to the initial particles being agglomerates, the mixing of agglomerates 1, 3, 5, and 7 in Lemoine and the subsequent shredding/grinding would result in the formation of agglomerates of agglomerated particles in an analogous manner to the formation of agglomerated particles noted above (in view of broader scope of the term “agglomeration”). As to the use of agglomerated particles as starting materials, Hover was previously cited to evidence the known use of particles in such an

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arrangement. Absent any conclusive showing of unexpected results, one of ordinary skill in the art at the time of the invention would have found it obvious to form the starting materials of Lemoine as agglomerates.


Justin Fischer

April 21, 2005


JEFF H. AFTERGUT
PRIMARY EXAMINEE
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